

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee on
Finance (JC-Fi)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ 97hrJC-Fi_Misc_pt47a_LFB

➤ Record of Comm. Proceedings ... RCP

➤ **

Commerce

Building and Environmental Regulation

(LFB Budget Summary Document: Page 149)

LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
2	PECFA Awards (Paper #265)
4	PECFA -- Expert Witness Costs (Paper #266)
5	PECFA -- Home Heating Oil Award Set-Aside (Paper #267)
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11	PECFA -- Aboveground Tank Eligibility (Paper #272)
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15	PECFA -- Priority for Brownfields (Paper #274)
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<p>To: Joint Committee on Finance</p> <p>From: Bob Lang, Director Legislative Fiscal Bureau</p>

ISSUE

PECFA -- Expert Witness Costs (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 150, #4]

CURRENT LAW

Under the Petroleum Environmental Cleanup Fund Award (PECFA) program, the statutes and administrative rules specify eligible and ineligible costs. Commerce is required to deny reimbursement of ineligible costs. PECFA claimants may appeal a Commerce decision to deny part or all of a PECFA claim.

GOVERNOR

Provide \$150,000 SEG annually from the petroleum inspection fund for expert witness expenses in legal matters under the PECFA program. Place the funds in unallotted reserve to be released upon approval by DOA.

DISCUSSION POINTS

1. When a PECFA claimant appeals a Commerce PECFA decision, the appeal is heard by a Department of Workforce Development hearing examiner as part of an inter-agency agreement between Commerce and DWD.

2. Commerce would use the funds provided in SB 77 to hire technical or environmental experts to provide information at administrative hearings in support of a Commerce decision to deny a PECFA claim or ineligible costs included in a claim.

3. Commerce hired two experts in one case to prepare information for an administrative hearing. It denied a \$1,000,000 PECFA claim based on owner gross negligence because Commerce claimed the owner continued to use tanks after the tanks failed a tightness test. The Department hired: (a) a technical expert in tank leak detection systems and petroleum inventory control; and (b) an environmental auditing firm (which is currently under contract to do audits of environmental work) to review the environmental work done at the site. The Department spent approximately \$9,000 for preliminary work by the two experts. The case was settled prior to the hearing with cost savings of \$200,000. (If the claim had gone to hearing and the state had lost, PECFA would have had to pay the owner \$1,000,000. If the state would have won a hearing, it still would have had to pay the lender \$1,000,000 under the lender hold harmless provision of the statutes, although Commerce could seek recovery of costs from the owner). Commerce estimates that if the case had gone to hearing, a total of \$25,000 would have been spent (an additional \$16,000) because the two experts would have testified at the hearing; thus, the \$9,000 spent on technical experts saved \$200,000 in PECFA costs.

4. Commerce paid for the technical experts from current PECFA administrative funds. The administrative appropriation does not have base level funding for this purpose, therefore, the Department reallocated funds used for PECFA claim reviewers and supplies.

5. Based on Commerce estimates, the recommended funds would be sufficient to hire experts for approximately six appeals that go to hearing annually, or a greater number of appeals that are settled before the hearing. However, the estimates are based on the Department's "best guess" with only the single case of actual data.

6. Commerce does not have plans to utilize technical experts for current appeals cases and does not know what the program need will be in the future. The Department would like to have funds available in anticipation of potential future appeals. Under the bill, Commerce would have to request DOA release of the funds from unallotted reserve.

7. It could be argued that \$150,000 annually is not warranted for expert witnesses based on actual expenses incurred to date of \$9,000. Provision of a smaller amount would provide a base level of funding which could be adjusted through budget or s. 13.10 requests if future program need warrants it. For example, \$25,000 would provide for a base level of expert witness expenditures for several investigations or at least one case that goes to hearing.

8. Under current funding levels, if Commerce decides to hire technical experts for activities related to appeals, it would have to reallocate funds from PECFA claims review activities such as salary and supplies budgets. Commerce lapsed funding for supplies totalling \$13,100 in 1995-96 and \$42,200 in 1994-95.

9. Under the bill, DOA would have to release the funds from unallotted reserve before Commerce could hire expert witnesses or use the funds for any other purpose. If the funds would not be needed for expert witness costs, DOA states the balance would lapse to the petroleum inspection fund at the end of the fiscal year.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to provide \$150,000 SEG annually in unallotted reserve for expert witness expenses in legal matters under the PECFA program.

2. Provide \$25,000 SEG annually in unallotted reserve for expert witness expenses in legal matters under the PECFA program.

<u>Alternative 2</u>	<u>SEG</u>
1997-99 FUNDING (Change to Bill)	- \$250,000

3. Maintain current law.

<u>Alternative 3</u>	<u>SEG</u>
1997-99 FUNDING (Change to Bill)	- \$300,000

Prepared by: Kendra Bonderud

MO# Alt #2

JENSEN	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 13 NO 3 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Home Heating Oil Award Set-Aside (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 151, #5]

CURRENT LAW

Commerce is required to allocate not more than \$500,000 of the Petroleum Environmental Cleanup Fund Award (PECFA) program awards appropriation in each fiscal year from the biennial appropriation for awards for home heating oil tank system discharges. Awards are to be made in the order that the applications are received. Commerce may conditionally approve awards if the \$500,000 in any fiscal year has been reached, and make those awards first in the following fiscal year. The maximum home heating oil award is \$7,500, and the owner is required to pay a deductible equal to 25% of cleanup costs.

Commerce is required to allocate not more than 5% of the PECFA awards appropriation in each fiscal year for awards for public school district tanks that store heating oil for consumptive use on the premises. Any of the 5% set-aside that is not needed during 1995-97 for school district tanks will be available for commercial underground or aboveground tanks.

GOVERNOR

Eliminate the \$500,000 annual maximum allocation for home heating oil tank awards. Instead, specify that the current set-aside of 5% of the PECFA awards appropriation for public school district heating oil tanks would also include home heating oil tanks.

DISCUSSION POINTS

1. As of April 1, 1997, Commerce completed review of 321 home heating oil tank claims for \$1,839,000 during 1995-97. In May, 1996, payments for 170 sites reached the \$1,000,000 maximum allocation for home heating oil tank PECFA awards for the 1995-97 biennium. Commerce is holding 151 home heating oil PECFA claims totalling \$839,000 to be paid on or after July 1, 1997, with funds from the 1997-99 biennial appropriation.

2. The Department reviews home heating oil tank claims on a "fast track" basis as soon as they are received. If Commerce continues to receive claims at the current rate, a total of \$1.1 million in home heating oil tank claims could be waiting to be paid on July 1, 1997, and estimated 1997-99 demand of \$2.1 million for home heating oil tank claims would be expected.

3. Commerce has paid a cumulative total of \$3.2 million for 582 home heating oil tank PECFA claims as of March, 1997. Contamination from 733 home heating oil tanks has been cleaned up with a cost of \$4.1 million under the program, including the 582 paid sites and the 151 sites that have been reviewed but not yet paid. As of December, 1996, Commerce was aware of approximately 900 home heating oil tank PECFA sites and estimated that there are an additional 600 potential home heating oil tank PECFA sites, for a cumulative total of 1,500 sites. Thus, almost half of the expected PECFA claims for home heating oil tanks have been reviewed and PECFA claims can be expected for an additional 770 home heating oil tanks with future PECFA costs of approximately \$4.3 million.

4. As of April 1, 1997, Commerce paid \$1.5 million for 67 public school district tank claims during 1995-97. If claims continue to be paid at the current rate, a total of \$1.7 million in school district claims would be expected during 1997-99. Most school district claims are reviewed on a "fast track" priority because the investigation and cleanup is completed with a cost of less than \$50,000. These fast track claims are then put at the end of the line of claims that have been reviewed and are waiting to be paid when funds are available.

5. Five percent of the PECFA awards appropriation would provide up to \$4,556,600 under the bill in each year, or \$9,113,200 during the 1997-99 biennium for both school district tanks and home heating oil tanks. A combined total of \$3.8 million (\$4.9 million with the \$1.1 million awaiting payment on July 1, 1997) for the two categories of claims would be expected during 1997-99, which would not exceed the \$9.1 million that would be available in the 5% set-aside.

6. Under the bill, the additional amounts that would be spent on home heating oil tank claims (approximately \$2.2 million during 1997-99) would reduce the amount that would be available for commercial underground and aboveground tanks.

7. The \$500,000 annual maximum allocation for home heating oil tank claims was established when the PECFA program was enacted in 1989 Act 399. The PECFA awards

appropriation was \$7,393,400 in 1988-89, so the \$500,000 allocation for home heating oil tank claims was 6.8% of the awards appropriation. The PECFA awards appropriation has increased to \$84,031,700 in 1996-97 (and would increase to \$91,131,700 under the bill), but the maximum allocation for home heating oil claims has not changed. The \$500,000 maximum annual allocation is 0.6% of the 1996-97 appropriation.

8. Home heating oil tank claims include a relatively small amount of money (maximum \$7,500 per claim) in comparison to commercial underground and aboveground tank sites. However, the amount may have a larger proportional impact on the finances of some homeowners than on some businesses. While commercial site owners may submit multiple claims during a time period of a few years before cleanup is completed, home heating oil tank claims are generally submitted as one claim for the entire cleanup. Home heating oil tank cleanups are usually completed at the time that a home heating system is converted from oil to another source such as natural gas or when a home is sold.

9. Under the bill, home heating oil and public school district tank claims would continue to receive fast track priority review when the investigation and cleanup is completed for less than \$50,000. Both types of claims would then be put at the end of the line of claims that have been reviewed and are waiting to be paid when funds are available. It is probable that this would result in considerably longer waits for payment of home heating oil tank claims than under current law.

10. It would be possible to fund all anticipated home heating oil tank claim demand during 1997-99 and retain the current priority for payment of the claims in two ways. First, the \$500,000 annual maximum could be increased to \$1,600,000 annually, which would fund the estimated \$1.1 million July 1, 1997, backlog and estimated \$2.1 million 1997-99 demand. Under this method, if home heating oil tank claim demand exceeds \$3.2 million during 1997-99, claims would be held for payment in July, 1999.

11. Alternatively, both the current maximum allocation and proposed percentage set-aside could be deleted and instead, all home heating oil tank claims would be paid as soon as they are received. It could be argued that this alternative would simplify the processing and review of home heating oil tank claims and home heating oil tank claims could be paid more quickly than under the bill. Approximately \$3.2 million would be spent on home heating oil tank claims in 1997-99, which would equal 1.8% of the 1997-99 PECFA awards appropriation.

12. On the other hand, it could be argued that the \$500,000 maximum allocation or 5% set-aside should limit the amount of funds spent for home heating oil and school district tanks in order to ensure that the majority of PECFA funds would be used for commercial, federally-regulated tanks.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to eliminate the \$500,000 annual maximum allocation for home heating oil tank PECFA awards and to include home heating oil tanks within the current set-aside of 5% for public school district tanks.
2. Delete the Governor's recommendation and change the \$500,000 annual maximum allocation for home heating oil tank PECFA awards to \$1,600,000.
- ③ Delete the Governor's recommendation and the current \$500,000 cap. Rather, specify that home heating oil tank claims shall be reviewed and paid as soon as they are received.
4. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt # 3

JENSEN	<input checked="" type="checkbox"/>	N	A
2OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 16 NO 0 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Change in Remediation Activities (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 151, #6]

CURRENT LAW

No provision.

GOVERNOR

Authorize Commerce to make additional PECFA payments for costs to enhance the approved remedial action activities or implement new remedial action activities if the originally approved remedial action activities failed to remedy the discharge. The total amount of the original award plus additional PECFA payments would be subject to the current maximum award limits.

DISCUSSION POINTS

1. The provision of SB 77 is intended to clarify that PECFA can reimburse costs of improvements to remedial systems that have not achieved their initial objectives.
2. Commerce has statutory authority to promulgate administrative rules to determine eligible costs under the program. Currently, the Department approves reimbursement for changes or additions to existing working remedial systems that make the system work better or faster, for example, adding technology to existing systems. However, Commerce believes that the statutory

provision is needed to approve changes to an initial remedial approach which was properly designed and engineered but which failed to reach required cleanup standards. For example, an engineered system may have been properly designed after a thorough investigation, but failed to cleanup the contamination. Therefore, changes to the system or a different remedial approach are needed to cleanup the site. Currently, the costs of these changes cannot be reimbursed, but could be under the bill.

3. There are some 1,300 to 1,400 sites currently undergoing a PECFA cleanup with use of engineered remedial systems. Engineered remedial systems use machines to pump petroleum products and other contamination out of the groundwater, to extract petroleum vapors or other contamination from the soil, or use a combination of mechanical techniques. Some of these remedial systems may not achieve cleanup of the site. A revised remedial action plan could lead to a more cost effective cleanup. For example, an existing engineered remedial system that extracts petroleum vapors from contaminated soil but reaches its limit of effectiveness may be replaced with excavation of remaining pockets of contaminated soil or by natural attenuation, which means allowing naturally-occurring processes to reduce contamination over time.

4. DNR is working on a 14-month project (May 1, 1996, to June 30, 1997) to evaluate the effectiveness of all PECFA sites with operating engineered remedial systems. Commerce and DNR are identifying sites for review (partially based on a Commerce survey of consultants). DNR is evaluating sites to determine whether sites can be closed, modified to reduce operating costs, or converted to natural attenuation of petroleum contamination. As of April 17, 1997, DNR had evaluated 927 sites and made cost savings recommendations for half of them. DNR estimated \$35.5 million in reduced future costs with their recommendations. Among DNR's findings for the 470 sites with cost savings are that: (a) 113 systems should continue to operate, with modifications such as decreased monitoring or reporting; (b) 82 sites should be closed; (c) 71 sites should be changed from an engineered system to natural attenuation; (d) 50 systems were closed between the time they were identified for review and the time DNR reviewed them (consultants had earlier estimated the sites would operate for a longer time); (e) 43 sites were closed as a result of the evaluation; (f) 38 systems should continue operation but with changes to improve the effectiveness; and (g) 73 sites received a variety of other recommendations.

5. DNR indicates that it does not have the authority to require site owners to choose a specific remedy or the lowest cost remedy, but makes recommendations of changes that can be made to complete a cleanup faster or at lower cost. However, Commerce states that it is informing site owners who have received cost efficiency recommendations from DNR that PECFA will only reimburse for the actions recommended by DNR.

6. The effect of the SB 77 provision on PECFA program costs would depend on the extent to which a second or subsequent remediation method increases or decreases overall costs of cleaning the site. Switching to a different remediation methodology after incurring substantial costs using the original method may result in overall savings at some sites, but is likely to

increase overall costs at other sites. Commerce and DNR officials argue that if a more efficient remediation method can be used at the site, close out may be accomplished sooner, resulting in cost savings by eliminating continued expenditures for the original cleanup method.

7. While it is unclear what overall program costs or savings would result from the statutory change, it is possible that the change could result in some cleanups being completed in a shorter period of time with cleanup of greater amounts of contamination than under current law.

8. Commerce indicates that it would determine whether to pay for the enhanced or new remedial activities by comparing the additional cost and the cost of the continued operation of the original design. However, the bill does not require Commerce to make this determination. In addition, the bill does not require Commerce to approve only those enhanced or new remedial activities that do not increase the overall costs of remedying the discharge. The bill only requires that the total amount of the original award and additional costs approved under the bill not exceed the current maximum award.

9. The provision is identical to language included in 1995 AB 1089, which contained several changes to the PECFA program. In May, 1996, the Joint Committee on Finance passed Assembly Substitute Amendment 1 and the Assembly passed Assembly Substitute Amendment 2 which both modified the language in the original AB 1089 to add that Commerce must determine that the enhancements or changes will remedy the discharge without increasing the overall costs of the cleanup. The Senate adjourned without considering the bill.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to authorize Commerce to make additional PECFA payments for costs to enhance the approved remedial action activities or implement new remedial action activities if the originally approved remedial action activities failed to remedy the discharge, subject to the current maximum award limits.

2. Approve the Governor's recommendation, but authorize Commerce to approve reimbursement for changes in remedial action activities only after the Department determines that the changes will remedy the discharge without increasing the overall costs of the cleanup.

3. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt #2

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS 0

To: Joint Committee on Finance
From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Interest Cost Reimbursement (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 151, #7]

CURRENT LAW

There is no statutory limit on reimbursement under the Petroleum Environmental Cleanup Fund Award (PECFA) program for interest costs incurred by PECFA claimants who obtain loans to complete PECFA-eligible cleanup work. Administrative rule ILHR 47 limits reimbursable interest rates for loans secured after January 31, 1993, to no more than 2% above the prime rate. Rules also allow reimbursement of loan origination fees at no more than two points of the loan principal and reimbursement of loan renewal fees at no more than 1% of the unreimbursed amount and remaining available loan balance.

GOVERNOR

Require that PECFA reimbursement for interest costs incurred by a claimant may not exceed the prime rate. Direct Commerce to promulgate emergency rules to implement the provision. The provision would first apply to interest costs incurred on the first day of the fifth month after the effective date of the budget act.

DISCUSSION POINTS

1. The current administrative rule limitations of interest costs, loan origination fees and loan renewal fees were enacted when Chapter ILHR 47 was created as an emergency rule

effective January 1, 1993. The permanent rule was effective March 1, 1994. Commerce established a PECFA administrative code revision advisory committee which began to meet in February, 1997. The advisory committee is planning to discuss changes in interest cost reimbursement as part of the current code revision process.

2. While the bill would limit the interest rate eligible for reimbursement under ILHR 47, it would not affect current administrative rule limitations on loan origination fees and renewal loan fees. Loan renewal fees are sometimes charged on the anniversary of the loan origination, whether or not the loan will be repaid shortly after the anniversary.

3. Since Commerce currently has administrative rules which limit PECFA reimbursement for interest costs, Commerce could promulgate a revision to further limit reimbursement for interest costs, whether or not the provision in the bill is enacted. This rule authority would extend beyond the interest cost limitation included in the bill to also include the limitation on loan origination fees and renewal loan fees included in current administrative rules.

4. Commerce indicates that only a few lenders charge an interest rate lower than the maximum prime plus 2% rate allowed in the current rule.

5. The administrative rules do not specify how Commerce would calculate 2% over the prime rate. The prime rate fluctuates over time. Currently, Commerce bases the prime rate on the rate published in The Wall Street Journal, which is an index representing the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. On May 1, 1997, the prime rate was 8.5% (and had been since March 26, 1997), which would allow PECFA reimbursement for loans at 10.5% currently, or 8.5% under the bill. However, because the bill does not address reimbursement of loan origination fees or loan renewal fees, the effective annual percentage interest rate would likely be higher. Under the bill, it is possible that banks would charge interest at the prime rate, then increase other allowable fees related to the loan.

6. The PECFA program depends on private lenders to provide up-front funds for cleanup work. Typically, lenders establish a line of credit or maximum loan amount for PECFA site owners or operators and pay bills as cleanup work progresses. Because state funds are not sufficient to eliminate the backlog of \$180.4 million of PECFA claims waiting to be paid as of April 1, 1997, the program has increasing dependence on lenders and increasing interest costs. Commerce officials believe that there may currently be over \$400 million in outstanding PECFA loans, including work in the existing backlog and work in progress for which a PECFA claim has not yet been submitted.

7. From January 1, 1994, through June 30, 1996, 7.1% of PECFA award payments were for loan interest costs. In comparison, during the same period, 35.7% of PECFA award payments were for consultants, 17.3% for soil treatment, 12.5% for remedial equipment, 9.3% for laboratory tests, 6.6% for monitoring, 4.6% for excavation, 3.4% for trucking, 2.2% for backfill and 1.3% for other costs. Data is not available to calculate the fiscal impact of the bill's

proposal. A review of the 600 PECFA claims processed from November 1, 1996, through February 28, 1997, shows that interest costs have increased from 7.1% of payments to 10.7% (\$4.9 million of the \$45.8 million in claims processed during the four months). The percentage of total PECFA funds spent for interest costs is expected to continue to increase as the backlog of claims waiting to be paid increases.

8. Statutorily reducing reimbursement for interest costs from the 2% over prime to no more than the prime rate would decrease the amount of funds that the PECFA program spends on interest costs.

9. The bill may increase costs for some PECFA claimants. While the administrative rule limits reimbursement for interest costs associated with loans secured after January 31, 1993, the bill would limit reimbursement for interest costs incurred on the first day of the fifth month after the effective date of the budget act. Therefore, PECFA claimants would likely incur interest costs for loans that were secured prior to the effective date that set interest above the prime rate. Unless these affected claimants could negotiate a loan interest rate reduction with their lenders, they would be responsible for interest costs in excess of the amount eligible for PECFA reimbursement. It is doubtful that lenders would choose to reduce the interest rate for loans that were secured prior to the effective date of the interest cost reimbursement reduction.

10. Interest cost reimbursements could be decreased without increasing costs for PECFA claimants who currently have loans at 2% over the prime rate by changing the effective date to be loans secured instead of costs incurred on the first day of the fifth month after the effective date of the budget act. However, this would result in less PECFA cost savings in the short-term compared to the bill. If this change would be made, a delayed effective date of five months would not be necessary and could result in a rush by lenders to secure loans at the current higher interest rate. Alternatively, the decrease in interest cost reimbursement could be made for loans secured on the effective date of the biennial budget act, which would immediately lower the reimbursable interest rate for loans secured after the effective date.

11. An additional way to reduce PECFA interest cost reimbursement would be to statutorily modify the other interest cost reimbursement limitations established in administrative rule Chapter ILHR 47. For example: (a) loan origination fees could be eliminated or limited to no more than one point of the loan principal instead of the current two points of the loan principal; and (b) loan renewal fees reimbursement could be eliminated. However, limiting or eliminating reimbursement of certain loan origination fees and loan renewal fees might prompt some lenders to limit PECFA lending.

12. It is not known, under the bill, whether lenders will: (a) decrease their interest rate for PECFA loans to the prime rate; (b) continue to lend at 2% over prime with the PECFA claimant being responsible for paying the interest costs not reimbursed by PECFA; or (c) a combination of the two lending practices.

13. Lenders typically lend at the prime rate only to their best customers. It could be argued that the state should pay no more than the interest rate that the best customers pay lenders. Lenders have the assurance that the PECFA program will reimburse eligible costs, even if banks have to wait two years or longer for reimbursement. Therefore, it is possible that when the state reimburses interest costs at 2% over prime, it is encouraging banks to raise interest charges to meet the allowable reimbursement.

14. PECFA claimants, not the state, must obtain bank loans for PECFA work. It is common for PECFA site owners to obtain a loan to upgrade the tanks from the local bank with whom the owner has a day-to-day working relationship. Owners often obtain a loan to complete PECFA remediation work from a bank with whom the claimant does not have a day-to-day working relationship because there are fewer lenders willing to make environmental cleanup loans. Commerce indicates that some lenders currently reduce the interest rate from 2% above prime to prime for costs that exceed the maximum PECFA award limit.

15. The bill has unknown impacts on lending activity for the PECFA program. It is possible that the bill would reduce lending to PECFA claimants because some lenders could refuse to provide PECFA loans at prime. It is also possible that some lenders may continue to provide PECFA loans but at rates higher than the prime rate. On the other hand, lenders who provide PECFA loans at the prime rate may increase their amount of lending if other lenders choose to decrease PECFA lending or continue to lend at a rate higher than prime.

16. If lending decreases under the bill, it may lessen the short-term demand for PECFA funds. However, owners would still have to upgrade their sites and some owners who have not yet upgraded their gas station tanks might have trouble obtaining a loan to do PECFA-eligible work before the December 22, 1998, federal upgrading deadline.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to limit PECFA reimbursement for interest costs incurred by a PECFA claimant to not more than the prime rate for interest costs incurred on or after the first day of the fifth month after the effective date of the budget act.

2. Modify the Governor's recommendation to specify that the interest cost reimbursement limitation would first apply to loans secured on the first day of the fifth month after the effective date of the budget act.

3. Specify that on the effective date of the budget act: (a) the interest cost reimbursement limitation would first apply to loans secured (instead of to interest costs incurred); (b) loan origination fees would be limited to no more than one point of the loan principal; and (c) reimbursement of loan renewal fees would be eliminated.

4. Modify the Governor's recommendation to specify that on the effective date of the budget act: (a) the interest cost reimbursement limitation would first apply to loans secured instead of to interest costs incurred; and (b) reimbursement of loan origination fees and loan renewal fees would be eliminated.

5. Maintain current law. (Commerce could address the issue through the administrative rule process.)

Prepared by: Kendra Bonderud

MO# 11483

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 12 NO 4 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Service Providers (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 151, #8]

CURRENT LAW

Under the current Petroleum Environmental Cleanup Fund Award (PECFA) program administrative rules in ILHR 47, owners or operators with commingled contamination may voluntarily combine sites, or "bundle" them into one project, for purposes of bidding remedial activities or operation and maintenance activities.

GOVERNOR

Authorize Commerce to promulgate administrative rules to deny reimbursement of costs incurred for a specific service (specified in the rule) if the owner or operator of the PECFA site did not use the same service provider approved by Commerce.

Further, authorize Commerce to promulgate administrative rules under which the Department would select service providers to provide investigation or remedial action services in specified areas. Allow Commerce to: (a) deny PECFA reimbursement to an owner or operator who uses a service provider other than the one approved by Commerce for the area; or (b) limit PECFA reimbursement to the amount that the selected service provider would have charged for the service.

DISCUSSION POINTS

1. Examples of possible implementation of the provision denying reimbursement for a specified service if the owner or operator does not obtain the service from the same provider approved by Commerce could include the following: (a) requiring two or more adjacent site owners or operators with commingled contamination to use the same provider (for example for operation and maintenance services); and (b) creating an approved list of services and providers and requiring owners or operators to use one of the providers on the list. Commerce indicates this could allow the Department to exclude providers who are unusually expensive or who provide substandard work.

2. Examples of possible implementation of the provision denying reimbursement for area-wide providers ("bundling") not selected by the Department, or limiting reimbursement to the amount that the selected provider would have charged, could include the following: (a) selecting providers for all investigations and remedial actions done in an area; (b) requiring any sites needing soil or groundwater monitoring in a particular county or geographic region to use a provider selected by Commerce; (c) conducting a bid process to designate the lowest cost provider for investigations, cleanup or operation and maintenance for an area; (d) requiring existing sites to change from their existing provider to one selected by the Department; and (e) refusing to select certain service providers who provide substandard or improper work.

3. While Commerce indicates the two provisions would provide somewhat similar authority, the first provision appears broader in that it does not limit the Department to "specified areas." Further, the first provision only allows Commerce to deny reimbursement if an unapproved provider is used. However, the Department believes that the second provision is broader and provides greater authority because it would allow the Department to: (1) select providers; (2) define the size of "specified areas;" (3) deny or limit the charges of the selected provider; and (4) open a bidding process to seek lower cost alternatives than exist in current contracts. Commerce indicates that both provisions are meant to allow considerable flexibility in developing administrative rules in order to contain program costs. Since the authority provided in the first provision may be largely included in the second provision, the first provision could be deleted.

4. Current administrative rules authorize voluntary bundling of sites. The bill would authorize Commerce to limit PECFA reimbursement to the amount paid to a provider who is selected by Commerce. The Commerce PECFA administrative code revision advisory committee is discussing bidding and bundling of activities.

5. Commerce indicates that the provision is intended to reduce PECFA costs. However, no estimate of the fiscal impact is made. Initially, Commerce intends to implement the provisions for two types of activities: (a) cleanup activities; and (b) operation and maintenance (for example, for engineered remedial systems that extract petroleum vapors from contaminated soil or contaminated groundwater).

6. Implementation of the provisions could require site owners to rebid existing contracts for work done after a specified date (to be determined by rule). The provisions could potentially affect 5,000 or more active PECFA sites. Some consultants and contractors might experience a loss of current contracts while others would experience an increase in work if they are successful low bidders.

7. Site owners might have less flexibility to choose the contractor to work on their site if service providers are selected by Commerce. The Department would have to determine which firms would be qualified to compete for selection as a provider for services specified in the rule.

8. Arguably, the cost savings goals could be met by limiting reimbursement to owners or operators who do not use the service provider selected to the amount charged by the selected provider, but not denying reimbursement if the owner or operator uses another provider. Commerce may limit reimbursement under the second provision but may only deny claims under the first. Requiring Commerce to limit allowable expenditures (but not to deny claims) would retain the flexibility for owners to retain existing contracts and to select their own service provider. However, Commerce argues that the ability to select a provider and deny reimbursement to owners and operators who do not use the selected provider is an important way of lowering program costs by selecting lower cost providers than under existing contracts and denying reimbursement for higher cost providers. Further, the Department argues that allowing only the limitation of costs to that of selected providers could result in administrative difficulties in reviewing claims to determine identical services.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to authorize Commerce to promulgate administrative rules to deny reimbursement of costs incurred for a specific service if the owner or operator of the PECFA site did not use a service provider approved by Commerce. Further, allow Commerce to promulgate administrative rules under which the Department would select service providers to provide investigation or remedial action services in specified areas and: (a) deny PECFA reimbursement to an owner or operator who uses a service provider other than the one approved by Commerce for the area; or (b) limit PECFA reimbursement to the amount that the selected service provider would have charged for the service.

2. Modify the Governor's recommendation to authorize Commerce to select service providers to provide investigation and remedial action services in specified areas and either deny reimbursement to an owner or operator who uses a provider other than the selected provider or limit reimbursement to no more than the amount charged by service providers selected by Commerce. (This would delete the first provision which would deny reimbursement of costs incurred for a specific service if an owner or operator does not use a provider approved by Commerce.)

Burke
3. Modify the Governor's recommendation to only authorize Commerce to limit PECFA reimbursement to an owner or operator who uses a service provider other than the one selected by the Department, to the amount that the selected provider charges. (This would delete the authorization to deny reimbursement of costs incurred: (a) for a specific service if an owner or operator does not use a provider approved by Commerce; or (b) if an owner or operator does not use a provider selected by Commerce for a specified area.)

4. Maintain current law.

Prepared by: Kendra Bonderud

MO# AH #2

JENSEN	Y	N	A
1 OURADA	Y	N	A
HARSDORF	Y	N	A
2 ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 9 NO 7 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Ineligible Costs (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 152, #9]

CURRENT LAW

The Petroleum Environmental Cleanup Fund Award (PECFA) program provides reimbursement to owners and operators for the eligible costs incurred to cleanup contamination from certain petroleum product storage tank systems. Commerce is required to reimburse the actual costs incurred but is authorized to establish a schedule of usual and customary costs for specific items and to use that schedule to determine the amount of a claimant's eligible costs. Commerce deducts a statutory deductible from the amount of the eligible costs. For underground tanks the deductible is \$2,500 plus 5% of eligible costs, up to \$7,500 per occurrence, and for aboveground tanks it is generally \$15,000 plus 2% of eligible costs over \$200,000.

Certain costs are determined by statute or administrative rule to be ineligible costs. The major ineligible costs specified in statutes include: (a) costs incurred before August 1, 1987; (b) costs of retrofitting or replacing a petroleum product storage system; (c) costs which Commerce determines are unreasonable or unnecessary to carry out the remedial action activities specified in the remedial action plan; (d) costs for investigations or remedial action activities conducted outside of Wisconsin; and (e) after November 1, 1991, costs of emptying, cleaning and disposing of a tank and other costs normally associated with closing and removing any petroleum product storage system. Some of the ineligible costs specified in Administrative Code Chapter ILHR 47 include: (a) costs related to improper or incompetent remedial activities and services; (b) costs for testing or sampling unrelated to the investigation for the extent of contamination; (c) costs associated with tank upgrades, requirements for complying with other state or federal rules or laws and future business plans; (d) legal costs which Commerce determines to be unreasonable or unnecessary to carry out the remedial action activities; (e) supervisory or management costs

determined to be unreasonable or unnecessary to carry out the remedial action activities; (f) costs determined to be excessive; (g) costs associated with general program support and office operation, since these costs are expected to be included in the hourly staff rates; and (h) costs reimbursed by insurance companies unless performing in an agent role.

GOVERNOR

Require that if a claimant submits a PECFA claim that includes certain ineligible costs, the amount of the PECFA award paid to the claimant would be reduced by subtracting the ineligible costs from the amount of eligible costs as a penalty. Direct Commerce to promulgate an administrative rule identifying ineligible costs to which the penalty would apply. The provision would first apply to claims submitted on the first day of the third month beginning after the effective date of the bill.

DISCUSSION POINTS

1. The bill would remove ineligible costs from the submitted claim (as under current law) and add a penalty equal to the amount of ineligible costs by deducting the ineligible costs from the amount of reimbursable eligible costs. That is, for a \$100,000 claim, \$10,000 in ineligible costs would result in a PECFA claim payment of \$80,000 (less the statutory deductible).
2. Commerce officials believe that the current removal of ineligible costs from a claim: (a) does not discourage the continued submittal of ineligible costs or attempts to disguise noneligible items as eligible items; (b) slows the claim review process; and (c) increases the number of appeals. They believe that the penalty in the bill would quickly stop or reduce the submittal of most ineligible costs. An estimate of the cost savings is not included in the bill. However, from January 1, 1994, through June 30, 1996, claimed costs determined to be ineligible for PECFA reimbursement totalled \$10.1 million, or almost 5% of the \$211.0 million in eligible costs.
3. Examples of commonly submitted ineligible costs are the costs of removing a tank and costs associated with tests for nonpetroleum products such as arsenic and lead. Commerce has found that some consultants are more likely than others to submit claims with ineligible costs and that noneligible costs are sometimes resubmitted after costs on prior claims were denied.
4. Commerce indicates it would promulgate a rule that contains a specific a list of ineligible costs, including such items as tank removals, cement and carpet at gas station gas pump islands, lights and backfill.

5. Ineligible costs are currently submitted in a variety of ways. Some PECFA site owners may not be aware that an ineligible cost is included in a PECFA claim submitted by the owner's consultant. Under the bill, the owner would be held responsible for submission of the ineligible costs.

6. The penalty provision could force owners to take a more active role in reviewing a PECFA claim before the owner or consultant submits the claim to Commerce. However, some owners argue that they lack sufficient knowledge of PECFA requirements and depend on their consultant to submit a proper claim.

7. Owners can protect themselves from the penalty provision by signing contracts with their consultants in which the consultants guarantee that no ineligible costs will be submitted with the claim. Consultants might see increased demand for their business if they guarantee the claims they submit for owners as containing no ineligible costs, or that the consultant, not the owner, would bear any penalty charged for submittal of ineligible costs.

8. Some owners might argue that if the ineligible costs are submitted by the owner's consultant, the consultant, rather than the owner, should pay the penalty. However, under the program, the site owner or operator is considered to be responsible for the claim.

9. A lesser penalty provision might serve as a similar deterrent to submittal of ineligible costs as the provision in the bill and would pose less of a financial burden for site owners. For example, an amount equal to half (instead of all) of the submitted ineligible costs could be deducted from the eligible costs.

10. The Department of Agriculture, Trade and Consumer Protection (DATCP) promulgated administrative rules for the Agrichemical Cleanup Program that specify that ineligible costs shall be deducted from the claimed amount. In addition, the rules authorize DATCP to deduct twice the amount of the ineligible claim from the applicant's total claim, the same as the PECFA provision in the bill. However, before DATCP deducts the ineligible costs, it must determine that the owner knew or should have known that the costs were ineligible. DATCP promulgated program rules under its general authority. The statutes do not specify the penalty for ineligible costs. The DATCP program has received over \$5 million in claims and the double-deduct penalty has been applied to approximately \$9,000 out of over \$300,000 in ineligible costs. DATCP is currently reviewing the provision as part of an overall review of the administrative rules for the program. While the industry wants the penalty eliminated from the rule, DATCP indicates that the provision has saved the program significant amounts of time and money.

11. The penalty provision could be modified to include language similar to the Agrichemical Cleanup Program to specify that Commerce could deduct ineligible costs from eligible costs if the Department determines that the PECFA claimant or consultant knew or should have known that the costs were ineligible. This might decrease the financial burden on

owners who are not aware that the claim included ineligible costs. The disadvantage of this approach is that the Department could be engaged in expensive administrative and/or legal proceedings to sustain such a finding.

12. While the provision requires Commerce to promulgate a rule identifying the ineligible costs to which the penalty applies, it also first applies the penalty to claims submitted on the first day of the third month beginning after the effective date of the bill. It is unlikely that Commerce could draft rules and obtain legislative approval of the final rule within two months of the effective date of the bill without being authorized to promulgate emergency rules. The effective date could be delayed, for example, to six months instead of two months. Either delayed effective date would put owners and consultants on notice that they should stop including ineligible costs in claims. Commerce could also be authorized to promulgate emergency rules to implement the provision. However, promulgation of emergency rules reduces legislative review of the administrative rule process.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to reduce the amount of a PECFA award paid to a claimant by subtracting the ineligible costs, as identified in administrative rule, from the amount of eligible costs, for claims submitted on or after the first day of the third month beginning after the effective date of the budget act.

2. Modify the Governor's recommendation to subtract an amount equal to half of the ineligible costs from the eligible costs when paying a PECFA award instead of subtracting an amount equal to all of the ineligible costs.

3. Modify the Governor's recommendation to subtract the ineligible costs from the eligible costs if Commerce determines that the PECFA claimant or consultant knew or should have known, that the costs were ineligible.

4. In addition to Alternative 1, 2 or 3: (a) delay the effective date of the provision to the first day of the seventh month beginning after the effective date of the budget act; and (b) authorize Commerce to promulgate emergency rules to implement the provision.

5. Maintain current law.

MO# 11/4

JENSEN	<input checked="" type="checkbox"/>	N	A
LOURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

Prepared by: Kendra Bonderud

AYE 16 NO 0 ABS 0

COMMERCE

Building and Environmental Regulation

PECFA -- Ineligible Costs [LFB Paper #271]

Motion:

Move to adopt Alternative 2, as modified, to require that if a consultant prepares a PECFA claim for an owner or operator, that the consultant pay an amount equal to half of the ineligible costs. Further, prohibit the consultant from charging the owner or operator for any penalty under this provision.

Note:

Commerce pays the PECFA claim to the owner or operator. The motion would require Commerce to bill the consultant for the amount of the penalty if the consultant prepares the claim. If the owner prepares the claim the owner would have the penalty deducted from payment. The motion would retain the requirement that Commerce identify ineligible costs in administrative rule.

MO#

1534

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

Motion #1534

AYE 16 NO 0 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Aboveground Tank Eligibility (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 152, #11]

CURRENT LAW

The Petroleum Environmental Cleanup Fund Award (PECFA) program provides reimbursement to eligible owners and operators for a portion of the costs of cleanup of contamination from eligible petroleum product storage tank systems. Federally-regulated underground petroleum storage tanks are not eligible for PECFA after they meet federal requirements for upgrading or for new systems. There is no parallel requirement for aboveground petroleum storage tanks.

GOVERNOR

Eliminate PECFA eligibility for aboveground petroleum storage tank systems: (a) after they meet state standards for upgrading an existing system; or (b) are new, aboveground systems that meet state performance standards and that are installed after April 30, 1991. Sites with upgraded or new aboveground systems would remain eligible for PECFA, if they are located on a site on which a petroleum product discharge is confirmed before the upgrading requirements are met or a new system is installed. The eligibility would continue until the earlier of May 1, 2001, or until the 91st day after DNR issues a case closure letter approving the cleanup of the discharge that occurred before: (a) the upgrading requirements were met; or (b) the new system was installed. The provision would take effect on the first day of the seventh month beginning after the effective date of the bill.

DISCUSSION POINTS

1. 1993 Acts 16 and 416 established that PECFA eligibility is generally not available to new or upgraded underground petroleum product storage tank systems that meet Administrative Code Chapter ILHR 10 and federal standards. Tank systems that were upgraded to federal and state standards prior to January 1, 1996, were eligible for PECFA until December 31, 1995, for certain PECFA-eligible contamination identified by that date if cleanup was begun by January 1, 1996. Tank systems that complete upgrading to federal and state standards after December 31, 1993, are eligible for PECFA for 90 days after upgrading is completed, if the site owner or operator applies for private pollution liability insurance within 30 days after upgrading is completed.

2. The current provisions related to moving upgraded and new federally-regulated underground petroleum storage tank systems from PECFA coverage to private insurance do not apply to aboveground systems. Aboveground petroleum storage tank systems are not subject to federal upgrading requirements.

3. The bill provides PECFA eligibility until as late as May 1, 2001, because that is the deadline included in Administrative Code Chapter ILHR 10 for upgrading aboveground petroleum storage tanks over 5,000 gallons. As owners or operators upgrade these larger aboveground tanks before May 1, 2001, they are currently required to cleanup contamination found during the upgrading process.

4. The provision would generally parallel provisions for underground systems and move new and upgraded aboveground systems (mostly bulk plants and terminals) out of PECFA eligibility. Federal regulations require federally-regulated underground systems to provide proof of financial responsibility for cleanup of spills. This means that after the underground systems are no longer eligible for PECFA the owners must obtain private pollution liability insurance. There is no similar federal or state requirement for aboveground tanks to obtain similar insurance.

5. The effective date (the first day of the seventh month beginning after the effective date of the bill) would allow aboveground tank owners who have upgraded their tank systems at least six months to obtain private pollution liability insurance. However, it could be argued that a shorter time, such as three months, would provide sufficient time for owners to obtain private insurance. However, Commerce officials indicate that the private insurance market is less well developed for aboveground tanks than for underground tanks and the delayed effective date may help owners who choose to obtain private insurance.

6. Currently, underground systems retain PECFA eligibility for 90 days after upgrading is completed as long as the owner or operator applies for private pollution liability insurance within 30 days after upgrading is completed. Thus, even if upgrading of an underground system is completed days before the December, 1998, federal upgrading deadline, the site would retain PECFA coverage for 90 days if the owner applies for private insurance

within 30 days. In comparison, under the bill, aboveground systems for which upgrading is completed less than 91 days before May 1, 2001, lose PECFA eligibility on May 1, 2001, not 90 days after upgrading is completed. Provision of 90 days of PECFA eligibility after completion of upgrading for those who apply for insurance within 30 days would more closely parallel the provision for underground tanks.

7. The following types of tanks do not have to meet state upgrading requirements and, under the bill, would continue to be eligible for PECFA indefinitely: (a) aboveground petroleum storage tank systems with 5,000 or less gallons (Commerce believes there may be a few of these tanks at bulk plants); (b) home heating oil tanks (maximum PECFA award of \$7,500); and (c) farm fuel tanks with 1,100 or less gallons that are more than 40 feet from a building (maximum PECFA award of \$100,000).

8. Commerce's 1997-99 biennial budget request recommended providing PECFA eligibility until May 1, 2005, for aboveground tanks that do not have to upgrade. The provision is not included in the budget bill. Commerce's recommendation would provide four years after the state upgrading deadline that non-regulated aboveground tanks could use to identify any PECFA-eligible cleanup costs. The additional four years could be viewed as a way of phasing out PECFA eligibility over time, first for federally-regulated underground tanks, second for state-regulated aboveground tanks and finally for non-regulated aboveground tanks. In addition, if the same deadline of May 1, 2005, would be provided for home heating oil and farm fuel tanks, it could effectively phase out PECFA eligibility for all tanks where contamination is identified after that date.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to eliminate PECFA eligibility for aboveground petroleum storage tank systems after they meet state standards for upgrading an existing system or are new, aboveground systems that meet state performance standards and that are installed after April 30, 1991.

2. Approve the Governor's recommendation, but change the effective date from the first day of the seventh month to the first day of the fourth month after the effective date of the biennial budget act.

3. Approve the Governor's recommendation. Further: (a) change the effective date from the first day of the seventh month to the first day of the fourth month after the effective date of the biennial budget act; (b) specify that the site would retain PECFA coverage for 90 days after completion of upgrading if the owner applies for private pollution liability insurance within 30 days after upgrading is completed; and (c) specify that all petroleum storage tank systems that are not subject to upgrading requirements in administrative rules are not eligible for PECFA for contamination identified and remediation begun after May 1, 2005.

4. Maintain current law.

MO# Alt #2

Prepared by: Kendra Bonderud

JENSEN	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	A

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	A
GEORGE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	A
JAUCH	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 12 NO 4 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

PECFA -- Eligibility for Non-Upgraded Tanks (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 153, #12]

CURRENT LAW

The Petroleum Environmental Cleanup Fund Award (PECFA) program provides reimbursement to eligible owners and operators for most of the costs of cleanup of contamination from eligible petroleum product storage tank systems. Commerce deducts a statutory deductible from the amount of the eligible costs. For underground tanks the deductible is \$2,500 plus 5% of eligible costs, up to \$7,500 per occurrence; for aboveground tanks it is generally \$15,000 plus 2% of eligible costs over \$200,000. Federally-regulated new systems or systems that are upgraded to meet federal standards are no longer eligible for PECFA. Sites where the owner or operator has received a prior PECFA award for a cleanup are no longer eligible for PECFA.

GOVERNOR

Repeal the current statutory provision that denies PECFA eligibility for sites with previous PECFA awards, which would provide continued PECFA eligibility for sites that have been cleaned up until they meet federal and state upgrading standards.

DISCUSSION POINTS

1. Federal law requires federally-regulated sites that are not eligible for PECFA awards to be covered by private pollution liability insurance or to provide other means of demonstrating proof of financial responsibility for new releases of petroleum products.

2. Some sites have undergone a PECFA-eligible cleanup but the owners have not upgraded or replaced tanks to meet the 1998 federal or 2001 state deadline to upgrade or close the tanks. For example, a site owner: (a) may have completed a cleanup and replaced the tanks but did not replace piping or install spill detection equipment so the site does not yet meet the federal upgrading requirements; or (b) may not have had sufficient funds to completely upgrade the tank systems at the same time that the owner completed a cleanup but will complete the upgrading at a later date before the upgrading deadlines. No estimate of the number of sites that would be affected under the bill is available.

3. Concerns have been raised that owners of non-upgraded sites with a prior PECFA award may encounter difficulty in obtaining private sector insurance.

4. Commerce officials indicate that private sector pollution liability insurance is generally available for \$300 to \$400 per tank per year, but that private insurance for sites where petroleum storage tanks do not meet federal or state upgrading requirements related to installation and safety is not as readily available or affordable. The Petroleum Marketers Association of Wisconsin and Wisconsin Association of Convenience Stores have negotiated a pollution legal liability and corrective action insurance policy with American International Specialty Lines Insurance tailored to Wisconsin for Association members. The policy provides insurance for new and upgraded underground petroleum product storage tank systems beyond that required under federal requirements with a minimum premium of \$1,500 per site (which would typically include three tanks) per year. This insurance is available to sites that have not completed upgrading, but typically at a higher cost that varies by site depending on what is known about any past contamination.

5. Under the bill, PECFA program costs would increase if sites that had a previous PECFA award and did not upgrade tanks to meet federal and state requirements at the time of the cleanup have a subsequent release of petroleum products and undergo another PECFA cleanup. Currently, the subsequent release would not be eligible for PECFA.

6. Commerce indicates that it is sometimes difficult to determine whether the source and cause of subsequent spills is from a new spill or from historical contamination which was eligible under the original PECFA claim. When Commerce cannot prove that contamination is new, it generally approves subsequent cleanup as a reopening of the original PECFA claim. After a tank is upgraded, leak detection equipment can make a clearer determination of when contamination occurred. PECFA costs could increase substantially for sites where the

Department determines the subsequent contamination is the result of a new spill rather than part of the original spill.

7. It could be argued that a site should not be eligible for more than one PECFA award and that the PECFA program should not continue to fund costs incurred for subsequent spills at sites where the owner opted not to complete the upgrade (including required spill prevention and leak detection equipment) at the time of the original cleanup. That is, the effect of the bill would be to shift the cost for subsequent cleanups from the owner to the state until the upgrading is completed, while owners who completed upgrades would not be covered. This could be viewed as placing owners who voluntarily complied with the more costly and stringent requirements to prevent future spills at a competitive disadvantage to owners who did not fully upgrade.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to repeal the current statutory provision that denies PECFA eligibility for sites with previous PECFA awards.

2. Maintain current law.

MO# Alt #1 *NOTE: NEEDS To adopt Gov's proposal* nderud

JENSEN	Y	N	A
2.OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

1. BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE _____ NO _____ ABS _____